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Level 5, 100 Market Street
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BY EMAIL: policy.submissions@asic.gov.au

**RE: GO MARKETS PTY LTD – CONSULTATION PAPER 291 REPORTING RULES:
DERIVATIVE RETAIL CLIENT MONEY**

1. On behalf of GO Markets Pty Ltd (GO Markets), we wish to express our appreciation at being given the opportunity to provide feedback in relation to the proposed new Client Money Reporting Rules as contained in ***Consultation Paper 291: Derivative Retail Client Money***.
2. By way of introduction, GO Markets is an issuer of OTC derivatives, including margin foreign exchange contracts and contracts for difference (CFDs) based in Melbourne, Australia. GO Markets is Australian Financial Services (AFS) Licensee (No. 254963) and is authorised by the Australian Securities and Investments Commission (ASIC) to (amongst other things) provide general advice, deal by issuing, and to make a market in OTC derivatives to retail and wholesale clients.
3. GO Markets supports ASIC's efforts to enhance the protection of client money for retail clients. We wish to put forward a practical view in response to ASIC's proposals outlined in the paper. In our submission, we have focused on key areas where it has been determined that adherence to the proposals would either be unworkable, would result in a material cost or operational change, and/or most importantly, where adherence would not further ASIC's objectives in obtaining meaningful data.

4. GO Markets has not elected to respond to every area in which ASIC is seeking a response, limiting its response to areas it believes that it can assist and indicating where it has no submission to make, as set out below.

5. Summary

In summary, we submit the following:

1. AFS Licensees should be required to perform client money reconciliations using a time at their discretion; and
2. Within a 72-hour period. The 72-hour period will enable AFS Licensees to identify and rectify any anomalies which may cause issues with the accuracy of the reconciliations;
3. A practical example of how ASIC would like the information required in the daily reconciliation to be presented would greatly assist the industry in understanding its obligations under the new rules;
4. GO Markets seek clarification from ASIC on the basis of the quantum of the significant penalties for non-compliance;
5. The obligation to obtain an external auditor report on an AFS Licensee's ability to comply with the client money reporting rules should be included in the annual audit which is completed within four months of the end of the financial year. Provision should be made for AFS Licensees who do not follow the July-June financial year.

6. Response to Proposal and Questions

B1Q1 Do you consider this definition, and its effect on the application of the proposed requirements in proposals B2–B5 below, provides adequate protection for retail clients?

No submission.

B1Q2 Do you agree that the client money reporting rules should apply to:

(a) all derivative retail client money received by an AFS licensee, other than client money that relates to a derivative that is traded on a fully licensed domestic market; and

(b) retail client money held in relation to overseas exchange-traded derivatives?

(a) Yes

(b) Yes

B1Q3 Should we undertake further consultation on whether AFS licensees that are not market participants, but that facilitate the trading of derivatives on licensed markets for their clients through an arrangement with a market participant (commonly referred to as 'indirect market participants' or 'shadow brokers'), should be required to comply with the client money reporting rules?

Do you consider that:

(a) the retail clients of these intermediaries are adequately protected by the existing regulatory framework; or

(b) there are regulatory benefits to be derived from extending the rules to apply to these intermediaries?

No submission.

B2Q1 Do you consider these proposals will improve the transparency of an AFS licensee's receipt and use of derivative retail client money?

Yes, however, we require further clarity on the information that is to be sent within 2 business days. An example or sample of how ASIC would like the information presented would assist in this regard.

B2Q2 What impact will the proposals have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?

If our submission regarding B3Q4 is accepted and amendments are made by ASIC to the final drafting of the new rules, we do not consider that the proposals will significantly impact business or impose significant additional costs.

If, however, the proposals are enacted in their current form, additional costs will be incurred in building new systems to perform the required reconciliations. Due to the many variables, we are unable to project, or reasonably estimate the quantum of these costs at this stage, but it is anticipated that they will be significant.

B2Q3 Do you consider that it is too onerous to comply with a written request for these records within two business days? If so, why?

Please refer to submission in respect of B2Q1 above.

B3Q1 Do you consider these proposals will:

***(a) be effective in enhancing ASIC's surveillance of the derivatives sector; and
(b) help ASIC identify discrepancies in an AFS licensee's client money account in a more timely manner?***

- (a) We are of the view that the proposals will be effective. Where applicable we have proposed reasonable modifications to the proposals.
- (b) Yes

B3Q2 What impact will these proposals have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?

We consider that the proposals in their current form will attract significant additional costs as new systems will be required to complete the reconciliation in the prescribed format (for the previous business day) "as at" 7pm on each business day. If we are able to develop these systems in-house, additional costs will be incurred in the areas of human resources and technology. If we are unable to develop these systems in-house, these costs will increase yet further. Due to the many variables, we are unable to project, or reasonably estimate the

quantum of these costs at this stage. It is our view that our proposed amendments in B3Q3 and B3Q4 will minimise the monetary impact of the new rules.

B3Q3 Will it be possible for your business to reconcile the amount of reportable client money held in a client money account for each client against the corresponding amount in your records?

Yes, reconciliation is certainly possible. There are however, inherent issues/limitations with performing a reconciliation within a 24-hour period as envisaged by the draft rules.

GO Markets has clients residing in many jurisdictions throughout the world. A significant portion of business is generated from the Asian market (and some from the European Region). These markets are mostly open as at 7pm (AEST). Subsequently, GO Markets experience a larger volume of transactions relative to other times of the day at this time. As a matter of convenience and adherence to global standards, we have an end of day which coincides with the New York close. The New York close is generally accepted as an international benchmark and, it is our understanding that the majority of OTC derivative providers in Australia have an end of trading day which coincides with the New York close.

As part of current processes, GO Markets conduct a reconciliation on a daily basis using an 'Equity Report' which provides a statement of all client activity in the previous 24-hour period from the New York close (4:59:59 pm New York time) ("Trading Day"). The New York close corresponds to between 7am and 9am depending on the time of year.

At the New York Close, our liquidity providers generate statements which show all open and closed trades of clients for the Trading Day. At this time, our Meta Trader systems generate an automated report setting out details of all client liabilities (i.e. client equity). It would not be a significant undertaking to move from these current procedures to performing the reconciliation process in accordance with the new rules, as at this time (New York close) as all relevant data and information are generated at this point in time. We anticipate that the necessary adjustments to our current systems can be made relatively easily to undertake the reconciliation required by the draft rules, provided that it occurs at New York Close.

Daily reconciliations occurring outside of this time would be unworkable and the information far less likely to be accurate and useful to ASIC.

B3Q4 Will it be possible for your business to perform a daily reconciliation by 7 pm on the following business day?

There are a number of issues with the 24-hour reconciliation timeframe. This is due to the fact that inaccuracies are likely to occur in the ordinary course of business, especially when post trade corrections are made (or other conceivable factors arise, such as when bank book errors occur, an exchange is down, or a trade adjustment is made etc).

To overcome the inherent difficulties involved in performing the reconciliation within a 24-hour window, GO Markets submits that there should be a 72-hour window following New York Close in which the daily reconciliations can occur.

Whilst we submit that reconciliation issues will typically be resolved within the 24-hour reconciliation window, from time to time, they may take us longer to resolve. In theory, reconciliation differences may occur in amounts held in a client money account for reasons beyond our control. An obligation would then arise under rule 3.1.1 for us to prepare a report to ASIC setting this out, when if more time was provided, the issue could be resolved without the need to report.

The preparation of reports in these situations would be of no practical use for ASIC and create an unnecessary compliance burden and cost on AFS Licensees who are otherwise compliant AFS Licensees. Further, and most importantly, such reporting would make it harder for ASIC to identify the real issues in respect of client monies.

If ASIC does go ahead with the 24-hour reconciliation window it is submitted that these limitations are inherent with any periodical reconciliation and should not be deemed to be an inaccuracy of the reconciliation process which would otherwise trigger the obligation to report anomalies in the reconciliation in accordance with rule 3.1.1.

B3Q5 Do you consider that the reconciliations required to be performed should be less frequent? If so, please provide reasons.

See submission in respect of B3Q4 above. In summary, inaccuracies are likely to occur in the ordinary course of business, especially when post trade corrections are made (or other conceivable factors arise, such as when bank book errors occur, an exchange is down, or a trade adjustment is made etc). These limitations are inherent with any periodical reconciliation and should not be deemed as an inaccuracy of the reconciliation process which would

otherwise trigger the obligation to report anomalies in the reconciliation in accordance with rule 3.1.1.

GO Markets submits that there should be a 72-hour window following New York Close in which the daily reconciliations occur in order to provide AFS Licensees more time to reconcile daily balances to allow anomalies to be identified and rectified. This would reduce the volume of inaccurate data being reported to ASIC.

B3Q6 Is it sufficiently clear what must be set out in the reconciliation?

We submit that it would greatly assist the industry in understanding its obligations under the new rules if ASIC were to provide further guidance pertaining to the following:

A practical example or sample of how ASIC would like the following requested information presented:

- *a record of the amount of reportable client money it has received from, on behalf of, or for the benefit of a client and is required under Div 2 of Pt 7.8 of the Corporations Act to hold in a client money account for that client (B2(a)(i))*
- *a record of the total amount of reportable client money it has received from, on behalf of, or for the benefit of all clients and is required under Div 2 of Pt 7.8 of the Corporations Act to hold in a client money account for all clients (B2(a)(ii))*
- *the amount of reportable client money held in a client money account for each client, and on a total basis, as at 7 pm on each business day (B3(a)(i))*
- *the corresponding amount of reportable client money recorded for each client, and on a total basis, in the licensee's records (B3(a)(ii))*
- *the amount of reportable client money held in a client money account for each client, and the corresponding amount recorded in the licensee's records in accordance with the requirement in proposal B2(a), as at 7 pm on the last business day of each calendar month, and signed by a director, or a person authorised by a director, attesting to the accuracy of the reconciliation (B3(b)(i))*
- *the total amount of reportable client money held in a client money account for all clients, and the corresponding amount recorded in the licensee's records in accordance with the requirement in proposal B2(a), as at 7 pm on the last business day of each calendar month (B3(b)(ii))*

B4Q1 Do you consider these proposals will be effective in ensuring that AFS licensees use reportable client money for permitted purposes only?

Yes, the rules act as a mechanism for ongoing audit and surveillance of the treatment of client money. In respect of penalties, whilst we appreciate that the high penalties will act as a deterrent to AFS Licensees tempted to flout the client money reforms which take effect in April 2018, we are surprised at the level and seek further information on the basis of the quantum of the penalties and how it is envisaged that enforcement will occur.

We submit that on the face of it (whilst confident that we will never incur a penalty from ASIC in relation to client money), \$1,000,000 non-compliance civil penalty provisions appear to be inconsistent with other similar ASIC regulated reporting regimes.

B4Q2 What impact will these proposals have on your business? Does your business already record and reconcile reportable client money as part of its existing processes? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?

Yes, GO Markets conduct a reconciliation on a daily basis as part of our existing processes. Our Meta Trader systems generate an automated report setting out details of all client liabilities (i.e. client equity), see submission to B3Q4 above.

No significant additional costs would be incurred in respect of the additional obligation to provide ASIC with a written report within 5 business days for failures to perform reconciliations or discrepancies when performing reconciliations, provided that our submissions in respect of B3Q4 are accepted.

Additional costs will be incurred in respect of the additional services required from our auditors in relation to the assessment of compliance with client money reporting rules. Whilst we are unable to predict the quantum of these additional services, the costs are likely to increase if this is a “standalone” exercise, as envisaged in the draft rules. The costs are likely to be lower if our submissions at B4Q3 are accepted.

B4Q3 Do you consider requiring AFS licensees to obtain an external auditor's report on their ability to comply with the client money reporting rules will provide additional protection to retail clients?

An external auditor report on an AFS Licensee's ability to comply with the client money reporting rules will provide an additional level of protection for retail clients. However, in order to reduce the administrative and financial burden, GO Markets submit that this obligation could be included in the annual audit which is completed within four months of the end of the financial year.

B4Q4 Do you consider that it is too onerous to require an AFS licensee to obtain an external auditor's report on its ability to comply with the client money reporting rules?

Do you consider that this requirement is appropriate given the existing obligations of an auditor to report certain matters to ASIC under Pt 7.8 of the Corporations Act?

No, but ASIC are referred to submission to B4Q3 above in respect of existing obligations under Pt 7.8 of the Corporations Act.

B4Q5 It is currently proposed that the requirement to prepare and give to ASIC an external auditor's report will commence on 1 July 2018 to align with the start of the new financial year. Do you consider this will provide an adequate amount of time for audit firms to develop appropriate standards to refer to when preparing a report on the AFS licensee's systems?

No submission in respect of the adequacy of the period of time from the perspective of audit firms – GO Markets consider audit firms themselves to be better placed to provide submissions to ASIC on this point.

However, and in respect of the 1 July 2018 commencement date, the end of our financial year is December 2018. See our submission in respect of B4Q4 in this regard. We submit that, in order to reduce the administrative and financial burden, the obligation could be included in the annual audit which is completed within four months of the end of our financial year (i.e. for GO Markets the obligation for the auditor's report would be April 2019).

B5Q1 Do you consider this proposal will be effective in ensuring that AFS licensees comply with the proposed client money reporting rules?

This obligation will be added to an AFS Licensee's existing obligations under its AFSL (and all other sources of regulatory obligation) and adherence should be subject to compliance monitoring alongside all other areas of obligation. As an additional component to the compliance management system, for AFS Licensee's with existing effective compliance programmes, the proposal will be effective in ensuring AFS Licences comply with the proposed client money reporting rules.

B5Q2 What impact will this proposal have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?

It is not anticipated that significant additional costs will be incurred per se in establishing and keeping policies and procedures up to date. GO Markets has sufficient in-house compliance staff with the requisite skill and knowledge to establish and implement policies and procedures designed to ensure compliance with the client money reporting rules. Additional costs conceivably incurred in relation to this obligation would result if we elect to submit our policies and procedures to specialist compliance lawyers to be reviewed ahead of implementation.

In respect of implementation/adherence with policies and procedures which set out the proposed new reconciliation procedures specifically, see our submissions in respect of B3Q4 and B3Q5 above.

Should you require clarification regarding any part of our submissions above, or if we can be of any further assistance during the consultation period, please do not hesitate to contact us.

Yours sincerely,

Christopher Gore
Chief Executive Officer
GO Markets Pty Ltd